Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1281

MAURICE MALCOLM DILLON,
Petitioner,

vs

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

MAURICE MALCOLM DILLON,
Petitioner, pro se

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No.

MAURICE MALCOLM DILLON, Petitioner

v.

UNITED STATES OF AMERICA,

PETITION FOR A WRIT OF CERTIORARI TO TENTH CIRCUIT COURT OF APPEALS

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Maurice Malcolm Dillon, the petitioner herein, earnestly requests that a writ of certiorari issue to review the judgement of the Tenth Circuit Court of Appeals, entered in the above-entitled case on December 16, 1977.

OPINIONS BELOW

The opinion of the Tenth Circuit Court of Appeals is reported at APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO (D.C. No. CR-77-35) and is printed in Appendix A hereto, infra, pages 28 to 31. The Journal Entry of Judgement of the United States District Court for the District of New Mexico is printed in Appendix A hereto, infra, page 32.

JURISDICTION

The judgement of the Tenth Circuit Court of Appeals (Appendix A, infra page 31) was entered on December 16, 1977. A timely motion for stay of mandate to petition for a writ of certiorari to the Supreme Court was presented to the Court of Appeals on January 3, 1978, and was granted on January 19, 1978. (Appendix A, infra, pages 33 to 36 .) The order of the Court of Appeals stayed the issuance of the mandate pending the timely filing by petitioner of his petition for a writ of certiorari in the Supreme Court of the United States by February 18, 1977. (Appendix A infra, page 37). The jurisdiction of the Supreme Court is invoked under the provisions of Title 28, United States Code Section 1252, 1254, 1651, and 2101, and under the Constitution of the United States, Articles III and VI.

Excerpts of the appropriate provisions of Title 28 are quoted to show their application:

Section 1252 - "Any party may appeal to the Supreme Court from an...order of any court of the United States,...,holding an Act of Congress unconstitutional in any...proceeding to which the United States,...is a party."

"A party who has received notice of appeal under this section shall take any subsequent appeal or cross appeal to the Supreme Court. All other appeals taken to other courts prior to such notice shall be taken directly to the Supreme Court."

Section 1254 - "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree; ...."

Section 1651 - "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law...."

Section 2101 - "(f) In any case in which the final judgement or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgement or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court...."

Excerpts of the apropriate provisions of the Constitution of the United States are quoted below to show their application:

Article III - "Sect. 1. The judicial power of the United States, shall be vested in one supreme court,...." "Sect. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution,...."

".... In all the other cases before mentioned, the supreme court shall have appellate jurisdiction both as to law and fact, ..."

Article VI - "This constitution, and the laws of the United States which shall be made in pursuance thereof; ..., shall be the supreme law of the land; and the judges in every state shall be bound thereby, ..."

QUESTIONS PRESENTED

The questions raised in this petition, for consideration of the Supreme Court are outlined in the following seven points:

POINT 1. The initial question raised in this cause is the constitutional validity of the income tax law, as published in the Internal Revenue Code, Title 26, United States Code. Specifically, the provisions of 26 USCS 7203, which pertain to the requirements for filing income tax returns, are financially discriminatory among the various categories of taxpayers, the sources of their incomes, the tax-exempt status of some individuals and organizations, and the uses and methods of income expenditures.

POINT 2. Petitioner has been denied the right to a complete and adequate defense. He was not permitted to raise the constitutional question in his defense, nor was he permitted to present testimony against the charges of "willful" failure to file tax returns.

POINT 3. Petitioner was unsuccessful in obtaining competent and licensed legal counsel, who was willing to challenge the power of the Internal Revenue Service, and who was willing and knowledgeable both in matters of tax law and in matters relating to the legal technicalities and methods of presenting the constitutional issue in the courts. The pre-trial preparation for the defense and the performance of the defense during the trial were inadequate and incomplete.

POINT 4. Petitioner was denied the right to present relevant testimony and witnesses on his behalf. Key government witnesses were not cross-examined before the jury, and government documents, important to the defense, were not presented as

exhibits. Unwilling, expert witnesses for the defense were not subpoenaed because of their fear of the power of the Internal Revenue Service. Testimonies of witnesses for the defense were prevented or prematurely terminated.

POINT 5. The court's instruction to the jury were incomplete and in error. The instructions did not show that the defendant/petitioner had entered a pleading of "not guilty because the law is unconstitutional," or that the defendant was entitled to a defense based on constitutional grounds. The instructions concerning the legal requirements for filing tax returns were incomplete and in error, and did not show that certain categories of taxpayers are not required to file a return.

POINT 6. The severity of the sentence is unusual when considering the petitioner has been sincerely and conscientiously attempting to challenge the constitutional validity of the income tax taw. The severity of the sentence is even more unusual when the petitioner, to his best knowledge, overpaid the amount of income tax due to the federal government for the years of 1972 and 1973. The severity of the sentence is unreasonable, also, because, on several occasions, the petitioner "willfully" offered to provide the Internal Revenue Service with the information necessary to complete the tax returns for 1972 and 1973.

Amendment VIII of the Constitution of the United States provides for limitations on the punishment of crimes and is hereby quoted:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

POINT 7. Petitioner has been denied the opportunity to present the issue of the constitutionality of the Internal Revenue Code before a three-judge federal panel for its consideration under the statute, 28 USC, section 2282, as requested by motion of the petitioner. The motion was denied because the statute was repealed by congress in 1976, but the statute was applicable in 1972 and 1973, the years specified in the counts as charged against petitioner. The repealing statute is Pub. L. No. 94-381, ¶2, 90 Stat. 1119 (1976). Petitioner believes that this is an ex-post-facto law, not to be applied in this case, and requests the Court's clarification.

STATUTES INVOLVED

1. Title 26 USC, Sections 6012, 6020 and 7203.

This is the statute involved in the charges against petitioner. The statute specifies the requirements for a taxpayer to file an income tax return. The statute has been revised since 1972 and 1973; thus, the version that was applicable in 1972 and 1973 is of concern in this cause. and is printed in Appendix A, hereto, infra, pages 41 to46.

2. Title 28, USC, Sections 1252, 1254, 1651, and 2101.

Appropriate excerpts of the sections of the statute listed above are quoted in the portion of this petition entitled "Jurisdiction," infra, pages 3 and 4.

3. Title 28, USC, Sections 2282, 2284.

These statutes provide for the method to obtain an injunction against enforcement of a federal statute and its constitutionality to be determined, and for the requirement, composition and procedure of a three-judge court. Copies of the statutes are printed in Appendix A, hereto, infra, pages 47 to 50.

4. The Constitution of the United States, Articles I, III, IV and VI, and Amendments I, IV, V, VI, VIII, XIV and XVI.

Applicable portions of the Articles and Amendments of the Constitution are quoted in the discussions of the "Jurisdiction" and "Statement of the Case" portions of this petition, infra, pages 3, 4 and 6.

5. Pub. L. No. 94-381 ¶2, 90 Stat. 1119 (1976).

Statute repealing 28 USC, Section 2282, printed in Appendix A, hereto, infra, page 50.

6. Title 18 USC, Section 3500.

This statute describes the requirements for production of statements and reports of witnesses. It is printed in Appendix A, hereto, infra, pages 38 to 40.

STATEMENT OF CASE

HISTORY: Petitioner was summoned on an information charging two counts of "willful failure to file income tax returns for calendar years 1972 and 1973 in violation of 26 USC, Sect. 7203." Petitioner entered pleas of "not guilty" and "not guilty because the law is unconstitutional."

Petitioner was brought to trial before the United States District Court in Albuquerque, New Mexico, and was found guilty on both counts. He was sentenced to six months incarceration on one count, and placed on probation for a period of three years following his incarceration.

Petitioner appealed the conviction to the Tenth Circuit Court of Appeals which affirmed the ruling and judgement of the trial court.

Petitioner moved the Court of Appeals for a stay of mandate to prepare and file this petition for a writ of certiorari to the Supreme Court of the United States. The stay was granted.

Petitioner has attempted to show that provisions of the income tax law, as specified in Title 26, United States Code, known as the Internal Revenue Code, are unconstitutional. Petitioner first raised the constitutional question in a civil suit brought in the United States District Court in Albuquerque, New Mexico in 1972. That suit was dismissed on the grounds of "sovereign immunity" of the federal government, since the government "had not consented to being sued."

As a result of the publicity from that suit, petitioner was contacted by various persons from other states, and informed that a proper method to challenge the law was to file an incomplete tax return noting the constitutional objection on the face of the return. Petitioner then filed such a return, but, in so doing, he attached a letter to the return explaining his sincere and conscientious belief that the law is unconstitutional and he considered it his patriotic duty to challenge the validity of the income tax law in the courts. Petitioner explained in the letter also, that he was not attempting to defraud the government or to deny the government of any revenue due to it. In fact, to the best of petitioner's knowledge, he actually overpaid more income tax than was due the government for the years 1972 and 1973.

During 1974 and 1975, petitioner was interviewed on several occasions by intelligence agents of the Internal Revenue Service. On each occasion petitioner cooperated fully with the requests and questions of the agents, and he offered to furnish the agents any information necessary to complete the tax returns, and to eliminate the necessity for any further and extensive investigation, upon only one condition, which was a guarantee that the petitioner would not waive any of his constitutional rights by his cooperation with the Internal Revenue Service. The agents continually refused to provide such a guarantee.

The points raised in this cause and listed in the Questions Presented portion of this petition are explained more fully below:

POINT 1. Constitutional Question. The initial questions raised in this cause are issues concerned with the constitutionality of certain portions of Title 26, United States Code, and with the constitutional rights of the petitioner and other citizens of the United States. Excerpts from the Articles of the Constitution of the United States, in which the rights violated are specified, are quoted below:

Amendment XIV, Section 1 - "... nor shall any state deprive any person ... within its jurisdiction the equal protection of the laws."

Article XVI - "The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration."

Article IV, Section 2 - "The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

Article I, Section 8 - "... all duties, imposts and excises shall be uniform throughout the United States."

Unequal treatment and financial discrimination among the various categories of taxpayers and the tax-exempt status of particular individuals and organizations, with respect to such items as source, amount and type of income, use and method of expenditure of income, amount of tax, requirements to file returns, elections to reduce or postpone tax, administrative methods to decrease amount of past due tax settlements, contempt of rulings in the courts by the Internal Revenue Service, are some of the examples at issue here.

In addition to the financial discrimination of the Internal Revenue Code, the administration of the law is in violation of the provisions of the Fourth Amendment to the Constitution of the United States, which is quoted below:

Amendment IV - "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourth Amendment constitutional guarantees are violated in actions and documents published by the Internal Revenue Service officials and agents. These are demonstrated by the extra-legal operations and policies described in the Internal Revenue manuals and by special confidential publications of the Internal Revenue Service. Included are such issues as intimidation and harrassment of taxpayers; violation of citizens' civil rights; selective prosecution and enforcement of the law, extra pre-trial publicity regarding violations charged against specific individuals; unequal treatment of citizens during Internal Revenue Service investigations; immunity of Internal Revenue Service agents from testifying before legal boards of inquiry; and arbitrary decisions by Internal Revenue Service auditors based upon rules and regulations not decided or approved by the Congress.

NOTE: In order to prevent any misunderstanding, the validity of the right of the Congress to enact an Income Tax Law, per se, is not at issue here, and it has not been an issue in this cause.

The question of the constitutionality of an income tax law is not challenged here and contrary to the allegations by the attorney for prosecution, neither does the petitioner protest the need for taxes to raise revenue for the operation of the government of the United States. In fact, on several occasions, petitioner has suggested an income tax based upon the principle of an equal tax for each and every dollar of income, from whatever source derived.

POINT 2. Right to Adequate Defense. Additional issues of prime importance in this cause are concerned with the constitutional guarantees for an accused to have a fair and impartial trial. Excerpts of appropriate portions of the Constitution of the United States are quoted below:

Amendment I - "Congress shall make no law ... prohibiting the free exercise thereof; ... the right of the people ... to petition the Government for a redress of grievances.

Amendment VI - "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, ... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The petitioner was denied the right to a defense based on constitutional grounds. Consistently, the petitioner has attempted to challenge portions of the law, to the best of his knowledge, through proper and legal actions. Petitioner attempted to challenge specific provisions of the Internal Revenue Code as a plaintiff, but was prevented from doing so on the grounds of the "doctrine of

sovereign immunity." Later, he filed tax returns noting on them his belief that the law is unconstitutional and attached letters explaining his sincere belief that he must challenge the validity of the Internal Revenue Code as his patriotic duty toward the government and Constitution of the United States. During the trial, petitioner was not permitted to show that he willingly cooperated in the investigation by the Internal Revenue Service with only one reserved condition which was that he would receive a guarantee that his cooperation would not constitute a waiver of his constitutional rights. Petitioner was denied the right to counter the argument of the prosecution that disobedience to the income tax law was "willful," when petitioner, according to his conscience, could not "willfully" obey two contradicting legal documents; namely, the Internal Revenue Code and the Constitution of the United States. Petitioner believes the Constitution of the United States to be the "supreme law of the land," and the laws of the United States are "made in pursuance (in conformance to) thereof" (the Constitution). Petitioner believes portions of the Internal Revenue Code are not in conformance to the Constitution and thus, he was required to obey the Constitution, and likewise, he was forced to disobey the Internal Revenue Code in order to challenge its validity in the courts. Petitioner's disobedience to the Internal Revenue Code was not "willful" because he was attempting to bring about the enforcement of the Constitution of the United States, and the Internal Revenue Code is in conflict with the Constitution. Petitioner was denied the right to explain his beliefs about the conflict between the Internal Revenue Code and the Constitution, during the trial, before the jury. Petitioner was denied the right to present evidence and testimony, on his behalf, relevant to the criminal charges

against him, during the trial, and which was relevant to his character, patriotism and experience in community service. Petitioner was denied the opportunity and right to have a key government witness cross-examined before the jury. Petitioner was denied the right to receive answers to relevant interrogatories presented to the government before the trial.

Petitioner was denied the right and opportunity to present relevant evidence and testimony for his defense before the trial jury. Defense counsel, after interruption by the prosecution, refused to call one witness to the stand. The testimonies of other witnesses were terminated prematurely. Defense counsel did not cross-examine one key government witness before the jury. Defense counsel refused to subpoena another government witness, and was unable to secure "willing" expert witnesses because of their fear of the power of the Internal Revenue Service. During the trial one of the government witnesses was instructed to stand by for further questioning, but he was completely forgotten, later, and never recalled to the stand.

The courts have held that if a respondent fails to raise any claim of immunity due to his constitutional rights, the failure to do so will deem his privilege to be waived. (See Podolin vs Lesher Warner Dry Goods Co., 210 Fed 87.)

The Supreme Court has stated that if the defendant desired to test any point he should have tested it in the return so that it could be passed upon. (See USA vs Seicho, 262 US 165.)

"One who refuses to attend and testify, or produce books and papers ... is not punishable ... if the refusal is not willful, but made in good faith and upon grounds which entitle him to the judgement of the court before obedience is compelled." (See Federal Power Commission vs Metropolitan Edison Company, USSC 915, 1938.)

The Supreme Court has ruled that in both tax felonies and tax misdemeanors that must be done "willfully," the bad purpose or evil motive described in Murdock is required. "Willfully" has the same meaning in felonies and misdemeanors. The requirement that a tax offense be committed "willfully" is not met if a taxpayer has relied in good faith on a prior decision of the Supreme Court (May 29, 1973). (See USA vs Cecil J. Bishop, 412 US 346.)

The Supreme Court has stated that "If the form of the return called for answers that the defendant was privileged from making, he could have raised the objection in the return, but could not on that account refuse to make any return at all." If the defendant desired to test any other point he should have tested it in the return so that it could be passed upon (May 16, 1927). (See USA vs Sullivan, 274 US 259).

"Any action to enforce a summons must be an adversary proceeding affording a judicial determination of the challenges to the summons and giving complete protection to the witness. Non-compliance is not subject to prosecution when the summons is attacked in good faith." (January 20, 1964) (See Reisman vs Caplan, 375 US, 440).

"Even if the imposition may be considered a tax, if it has punitive purpose, it must be preceded by opportunity to contest its validity." (See Regal Drug Corp. vs Wardell, U.S. Collector of Internal Revenue, 260 US 386.)

The court cases identified above support the petitioner's contention that he was denied an adequate defense during the trial, and that he is entitled to a hearing on the constitutionality of the income tax law and its requirements to file tax returns.

(In another similar case in the District Court here in Albuquerque, the court took notice of several interested citizens in the audience, and then told the defendant that "I don't want any more of this constitutional nonsense.")

The petitioner is not a lawyer, and apologizes to the Supreme Court for his lack of knowledge and experience in judicial proceedings; however, he appeals and earnestly requests the court to explain why the lower courts have refused to allow the question of constitutionality to be considered in this cause.

POINT 3. Competent Legal Counsel. Pre-trial preparation by the trial defense counsel was unsatisfactory and inadequate. Counsel did not demonstrate knowledge of the Internal Revenue Code nor the Internal Revenue Manuals. Counsel did not demonstrate knowledge of the 1972 and 1973 requirements for filing tax returns. The defendant requested counsel to prepare and serve interrogatories and counsel did not know that interrogatories were permitted in criminal cases. Counsel indicated that he would not try to win a favorable

decision in the district court, but would make certain of getting points on the record that would be appealable.

Counsel was unable to subpoena "willing" expert witnesses to testify in the trial because of their fear of the power of the Internal Revenue Service. Counsel delayed procuring information and documents held by the prosecution that was relevant to the cause for a proper defense. Counsel was not prepared, with the defense witnesses and the defendant, for complete and relevant testimonies on the witness stand.

During the trial the defense counsel did not question a key government witness before the jury. Neither did counsel put a character witness on the stand when interrupted by the prosecution. Counsel, also, forgot to recall another government witness for further questioning after the witness was instructed to stand by. Counsel did not raise objections to the court's instructions to the jury when those instructions were in error and incomplete. Apparently, the defense counsel was not familiar with the rulings of the Supreme Court and other courts that were relevant to the defense, and which are quoted in petitioner's briefs to the court of appeals, and in part in this petition.

Petitioner requested the defense counsel to file a proper notice of appeal immediately after the trial, but, after learning the document had not been filed later, petitioner prepared the notice of appeal, himself, and proceeded pro se.

Petitioner has contacted several attorneys, but has been unsuccessful in engaging one who is willing to take a client against the Internal Revenue Service, who is willing to take an appeal case, and/or who is willing and knowledgeable in challenging the constitutionality of the income tax law.

(Recently, an acquaintance was defending himself against a criminal charge, and the court assigned a public defender to counsel him during his trial. The counsel advised the defendant to plead "insanity," but the defendant refused and was successful in showing the court that the government witnesses were distorting the facts in the case, and the case was dismissed.)

POINT 4. Relevant Testimony and Witnesses. Petitioner was denied the opportunity to present relevant testimonies and to question defense and prosecution witnesses during the trial. The prosecution objected to the testimony of one witness regarding the character of the petitioner. The prosecution misled the jury with inappropriate questions of another witness regarding the petitioner's reasons for challenging the validity of the income tax law. The prosecution interrupted the cross-examination of a key government witness when the witness was about to admit that the petitioner had discussed the petitioner's rights under the Constitution, and further testimony of that witness was not permitted before the jury. Expert witnesses for the defense were not subpoenaed for the trial, and another witness for the character of petitioner was not put on the stand, at all, because he was under investigation by the government and would have become legally immune to prosecution if he had been interrogated and claimed his Fifth Amendment rights during the trial for the petitioner. Petitioner was not permitted to explain his own reasons for his failure to file a complete tax return.

The Supreme Court upheld the opinion of the Maryland Court of Appeals, in Brady v. Maryland 373 U.S. 83, which stated: "... suppression of the evidence by the prosecution denied petitioner due process of law."

Counsel for the defense failed to present the interview notes written by the intelligence agent of the Internal Revenue Service for exhibits in the trial. Those notes were recorded by the agent to document the interviews between the agent and petitioner and would have been evidence to support the petitioner's theory of defense. Title 18, USC Section 3500 prescribes the requirements for

production of statements and reports of witnesses, but this procedure was not shown by defense counsel during the trial.

POINT 5. Jury Instructions. The Court's instructions to the jury were incomplete and in error concerning the requirements of the Internal Revenue Code on filing tax returns. The instructions did not specify the categories of tax-exempt taxpayers who need not file returns, nor did the instructions specify types of tax-exempt income to show the financial discrimination in the Internal Revenue Code. The instructions did not include the right of the defense to raise the issue of constitutionality on his behalf. Also, the instructions did not show the discrepancy of the definition of the term "willful" among the courts. Defense counsel failed to raise objections to the jury instructions concerning errors in quoting the statutes, and concerning the defense based upon constitutional grounds and the definition of "willful."

In United States v. Smith, Nos. 76-1864 and 76-1865 (Tenth Circuit) the court stated: "The law is settled that in criminal cases a defendant is entitled to adequate instructions to the jury on his theory of defense, provided there is evidence to reasonably support the theory ... ."

"On the other hand, the defendant's conduct is not willful if you find that he failed to file a return ... due to his good-faith misunderstanding of the requirements of the law."

"Had appellants established a good-faith misunderstanding of the law, the jury, under this instruction, would have been obligated to return a verdict of not guilty."

The petitioner believes that the Constitution is the supreme law of the land, and that the income tax law is in conflict with the provisions of the Constitution. If this is not the case then the petitioner, in good faith, has misunderstood the provisions of the Constitution and the income tax law. The petitioner has explained in other parts of this petition, his belief concerning the conflicts between the income tax law and the Constitution.

The jury should have been instructed, as stated in the Internal Revenue Code, Title 26, USC Section 6020, as follows:

"If any person shall fail to make a return required by this title, or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person."

The petitioner offered to the intelligence agent on several occasions to disclose all information necessary for the preparation of his tax returns for 1972 and 1973.

POINT 6. Severity of Sentence. The Court of Appeals misinterpreted the point in Appellant/Petitioner's brief before the Court of Appeals concerning the severity of the sentence imposed by the Trial Court. Petitioner did not challenge the sentence as based on the statutory limits that are specified in the Internal Revenue Code. The severity of the sentence was challenged on the basis that it was unusual to imprison a person because of that person's sincere and conscientious desire to pursue what he believed to be his legal

and patriotic duty to support and uphold the Constitution of the United States. The sentence appears even more unreasonable when the defendant is not allowed to present his complete argument before a jury, and when another person is not sentenced to imprisonment because he entered in a plea-bargain with the prosecution, on similar charges, before the District Court that stated it "didn't want to hear any constitutional nonsense."

The sentence appears absurd when considering the provisions of Title 26, USC Section 6020, which allows for tax returns to be prepared by the Secretary of the Treasury or his designate, a representative of the Internal Revenue Service. It is absurd, particularly in this cause, because the petitioner was willing to offer all information necessary for completion of the return, to the agent of the Internal Revenue Service.

There is no wonder why the general public fears the power of the Internal Revenue Service, when it appears the agency will selectively harrass a particular taxpayer for the publicity of securing a conviction in order to set an example for the public.

POINT 7. Three-Judge Panel. Petitioner has been denied the opportunity to present the issue of the constitutionality of the Internal Revenue Code before a three-judge federal panel for its consideration under the statute, 28 USC, Section 2282 as requested by motion of the petitioner. The motion was denied because the statute was repealed by Congress in 1976, but the statute was applicable in 1972 and 1973, the years specified in the courts as charged against petitioner. The repealing statute is Pub. L. No. 94-381, ¶2, 90 Stat. 1119 (1976). Petitioner believes this is an ex-post-facto law, not to be applied in this case, and requests the Court's clarification.

REASONS FOR GRANTING WRIT

The reasons that this petition for writ of certiorari should be granted are described below:

1. Petitioner has the right to a defense based on constitutional grounds. The quotations from the several cases cited herein, many of which were opinions of the Supreme Court, support the petitioner's contention that he should be heard, and his theory of defense should be considered.

2. The criminal charges against the petitioner were made to publicize the necessity of the public to fear the power of the Internal Revenue Service. The petitioner is challenging that power in an effort to enforce the guarantees of equality for each and every citizen according to the Constitution of the United States. Petitioner believes that, unless the government eliminates financial inequalities in our legal requirements and judicial system, then the government of the United States is in danger. Financial equality in taxation is as important in maintaining a government "of the people" as is equality in racial and religious affairs, employment opportunities, and opportunities in free enterprise.

No bureacracy of the government should be permitted to have the enormous power of the Internal Revenue Service, which ignores the provisions of the Constitution, and even portions of the Internal Revenue Code. No agency of the government should be permitted to use selective enforcement of the law and prosecution of individuals to enhance the fear of the public. No agency of the government should be allowed to have its agents operate outside of the law.

3. One uppermost objective in our system of justice should be the guarantee of fair and impartial trials. There can be no real justice if factual information is restricted from being presented in evidence and testimony. Certainly legal procedures are important in maintaining discipline in the courts, but should procedures and legal technicalities overrule factual information and complete consideration of the merits? Does our system of justice depend on who has the best legal counsel or does it depend on facts, merits and guarantees of the Constitution?

4. A jury that must decide the guilt or innocence of a defendant cannot make a reasonable decision if it, the jury, does not have all the information regarding the crime, the legal requirements, the motive, and the guarantees of the supreme law of the land. The jury should not be allowed to consider false allegations and insinuations. The attorneys should be under oath to tell the truth as are the witnesses in court. The attorneys should not be permitted to make misleading statements before the jury in order to influence the verdict. If a defendant is not satisfied with performance of his counsel, the court should give the defendant an orderly opportunity to so state and to explain his reasons, before the jury is retired to consider its verdict.

A writ of certiorari should be allowed by this court to permit the question of the constitutionality of the requirements to file tax returns to be considered and decided. The writ should be allowed to clarify the method for raising the question of constitutionality of a statute that was alleged to be disobeyed before 1976 as well as after 1976.

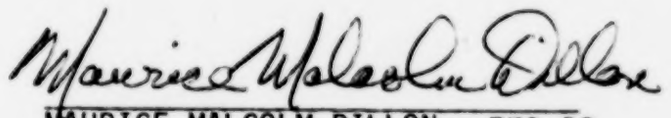
The writ should be allowed to permit the clarification of the term "willful." Does the term imply that no evil motive is intended? Does it imply a good-faith misunderstanding of the law, including the supreme law of the land? The writ should be allowed to clarify whether or not the selective prosecution of an individual must be allowed.

Does an agency of the government have the right or duty to treat one individual differently than another under the law? Does an agency of the government have the right or duty to cause fear in the eyes of the public by selective prosecution? The writ should be allowed to clarify the objectives of incarceration of an individual whose crime was being conscientious in attempting to uphold the Constitution of the United States and who has an extensive background of community service and concern for true political reform.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



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APPENDIX A

OPINION AND JUDGEMENT

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

NO. 77-1373

MAURICE MALCOLM DILLON, Defendant-Appellant,

vs.

UNITED STATES OF AMERICA, Plaintiff-Appellee.

(Filed Dec. 16, 1977)

Submitted on the briefs.

Malcolm Dillon, Albuquerque, New Mexico, pro se.

Victor R. Ortega, United States Attorney;
Richard Smith, Assistant United States Attorney,
Albuquerque, New Mexico, for Plaintiff-Appellee.

Before LEWIS, Chief Judge; HILL and SETH,
United States Circuit Judge.

HILL, Circuit Judge.

Maurice Malcolm Dillon was convicted on both counts of an information charging him with willful failure to file income tax returns for the calendar years 1972 (Count I) and 1973 (Count II), in violation of 26 U.S.C. § 7203. Dillon was sentenced to six months' incarceration on Count I; the sentence on Count II was suspended, and appellant was placed on probation for a period of three years to commence following his incarceration.

The evidence established that Dillon had income of $12,000 in 1972 and $11,500 in 1973 and that he was familiar with the requirement that he file returns. The documents he filed as his personal income tax returns in 1972 and 1973 contained only his name and his objection on various constitutional grounds to supplying any additional information. They were of the variety which we held in United States v. Porth, 426 F. 2d (10th Cir. 1970), *cert. denied*, 400 U.S. 824, constituted no return at all within the meaning of the Internal Revenue Code.

Dillon argues that his failure to file was not willful because it was not attended by a bad purpose or evil motive; it was an attempt to test the validity of the income tax laws which he deeply believed to be unconstitutional.[1] He contends he was entitled to a jury instruction to

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[1] Much of Dillon's brief is devoted to his contention that the income tax laws are unconstitutional, an issue not before us in the present proceeding. He requests that we convene a three-judge district court to consider that question. However, the statute under which Dillon claims entitlement to such a proceeding, 28 U.S.C. § 2282, has been repealed. Pub. L. No. 94-381, § 2, 90 Stat. 1119 (1976).

the effect that the element of willfulness in 26 U.S.C. § 7203 requires proof that he acted with bad purposes. Contrary to Dillon's contention, a defendant need not be shown to have acted with bad purpose or evil motive to be convicted under the section. United States v. Pomponio, 429 U.S. 10 (1976); United States v. Buchanan, No. 75-1916 (10th Cir. Jan 12, 1977). As the trial court correctly instructed, to act willfully in this context means to act "voluntarily, purposefully, deliberately, and intentionally, as distinguished from accidentally, inadvertently, or negligently."

Dillon next argues that the trial judge erroneously limited his testimony concerning his belief that the tax laws are unconstitutional. He sought to present such testimony to explain his purpose for failing to file a return. He contends it negated the element of willfulness in his failure to file. We have held that a defendant need not be shown to have acted with bad purpose or evil motive. It follows that demonstration of a good purpose is not a defense. If it is shown that a defendant intentionally violated his known legal duty to file a return, his reason for doing so is irrelevant. United States v. Pomponio, *supra*; United States v. Buchanan, *supra*. To the extent that Dillon's testimony was excluded, it was properly executed.

We find no merit in the additional issues Dillon raises. We will mention three of them briefly. Dillon challenges the sentence imposed upon his conviction. The sentence was well within statutory limits for the offenses and therefore cannot be disturbed on appeal. United States v. Blanton, 531 F.2d (10th Cir. 1975). Dillon alleges that the trial judge erred in prohibiting a character witness from testifying

on direct examination regarding specific instances of Dillon's conduct. Rule 405, Fed.R. Evid., provides sound basis for the trial judge's ruling. Dillon's challenge to the jury instruction concerning items includable in gross income was not raised during the trial and does not warrant consideration for the first time on appeal. Fed. R. Crim. P. 30.

AFFIRMED.

JUDGEMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
for the DISTRICT of NEW MEXICO

NO. CR 77-45.

UNITED STATES of AMERICA, vs

MAURICE MALCOLM DILLON, Defendant
(Filed May 9, 1977)

In the presence of the attorney for the government the defendant appeared in person on May 9, 1977, with counsel, James B. Kelly, retained counsel.

Plea:
Plea of not guilty.

Finding and judgement:
Defendant has been convicted of the offense of "Failure to File Income Tax Return, in violation of 26 USC 7203, as charged in Information filed February 23, 1977"

Sentence:
One (1) year as to Count I of the Information; and on condition that the defendant be confined in a jail or treatment-type institution for a period of six (6) months, the execution of the remainder of the sentence is hereby suspended.

It is ordered that imposition of sentence on Count II of the Information is hereby suspended and defendant is placed on probation for a period of three (3) years to commence following the period of his incarceration on Count I.

Signed by: E.L. MECHEM, U.S. District Judge.

MOTION FOR STAY OF MANDATE

UNITED STATES COURT OF APPEALS
for the Tenth Circuit

No. 77-1373

UNITED STATES OF AMERICA, Appellee,

vs.

MAURICE MALCOLM DILLON, Appellant.
(Dated January 3, 1978)

Pursuant to the provisions of Section 2101 (f), Title 28, United States Code, and Rule 41(b) of the Federal Rules of Appellate Procedure, Maurice Malcolm Dillon, the above-named appellant, respectfully moves the Court to enter an order staying issuance of mandate in the above-named appeal.

The reason for this motion is that it is the bona fide intent of the above-named appellant to make proper and timely application to the Supreme Court of the United States for a writ of certiorari.

The petition for a writ of certiorari will be substantially based on the following grounds:

1.) Portions of the Internal Revenue Code are unconstitutional and discriminatory concerning the various categories of taxpayers and their sources of income. Not all parties with equal or similar incomes are required to file returns. Specific methods of operation by agents of the Internal Revenue Service are in violation of the

rights of taxpayers. Not only does the Constitution guarantee equality for all citizens, regardless of race, sex, or religion, but it guarantees, also, equal protection of the law, and an equal tax on each dollar of income; that is, discrimination, because of wealth or financial status, is prohibited. The Internal Revenue Code is in conflict with the protection guaranteed by the Constitution.

2.) Appellant has been denied the right to a defense based on constitutional grounds. Appellant has not been permitted to demonstrate before the jury that he has attempted, consistently, to challenge the law through proper and legal actions. Appellant believed that he had filed valid returns, though incomplete, for the years 1972 and 1973.

3.) Appellant has been unable to obtain adequate legal counsel who was willing and/or competent both in matters of tax law and in matters relating to the legal technicalities and methods of presenting the constitutional issue in the courts.

4.) Appellant was denied his right to present relevant evidence and testimony for his defense before the jury. Defense counsel, after interruption by the prosecution, refused to call one witness to the stand. The testimony of another witness was terminated prematurely. Defense counsel did not cross-examine an important government witness before the jury. With appropriate interrogation of the witness, the defense would have shown that appellant offered to furnish tax return information to the agent several times during the government's investigation. Before the trial, defense counsel indicated that his plan was to get enough points on the record so that they could be raised later in an appeal, in lieu of better preparation for the trial. Appellant's own testimony on the stand

was terminated because the counsel was unprepared to present the proper questions to overcome the objections by the prosecution. Testimony and evidence relevant to appellant's willingness to furnish income tax return information, including amended returns, to the government agent and to the U.S. Attorney's office was not introduced in the trial.

5.) A government accountant was not subpoenaed to testify during the trial, although it was requested by the appellant.

6.) The Court's instructions to the jury were incomplete and in error concerning the law which the appellant is accused of violating. The instructions did not specify the categories of taxpayers who need not file returns, nor did they specify the types of incomes that are exempt from reporting requirements. And the instructions were in gross error concerning the amount of income required for each of various categories of taxpayers before any return is required.

7.) The Court of Appeals misinterpreted the point in appellant's brief concerning the severity of the sentence. Appellant does not challenge the sentence as based on the statutory limits that are specified in the Internal Revenue Code. The severity of the sentence was challenged on the basis of the sincere and conscientious desire of a taxpayer attempting to pursue what the thought to be his legal and patriotic duty to uphold the Constitution of the United States. Appellant does not believe that the objective of the judicial system is to punish a citizen for raising the question of the constitutionality of a law by a punishment of incarceration. The punishment appears even more unreasonable, if the citizen is not allowed to present his complete

argument before the jury.

8.) The charges against the appellant were for alleged legal violations that occurred in the years of 1972 and 1973. Appellant has based his defense on the issue of constitutionality of the law. Appellant requested the convening of a three-judge federal panel to hear and decide that question, as required under the statute, 28 USC, sect 2282, which was in effect at the time of the alleged offenses. Although that statute was repealed in 1976, it was applicable in 1972 and 1973, and the statute repealing it was not applicable then, thus the new statute is an ex post facto law which is not valid in this cause according to the Constitution. Therefore, a three-judge federal panel should be convened to hear and decide the constitutional issue.

Wherefore, the above-named appellant respectfully moves the Court for an order staying the issuance of the mandate herein pending the filing by appellant of a petition for writ of certiorari in the Supreme Court of the United States, and until final disposition therein of the above-entitled appeal.

(signed: Malcolm Dillon, pro se)

STAY OF MANDATE

NOVEMBER TERM - January 19, 1978

Before Honorable Oliver Seth, Honorable David T. Lewis, and Honorable Delmas C. Hill, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff/Appellee,

vs.

MAURICE MALCOLM DILLON, Defendant/Appellant.

This matter comes on for consideration of appellant's motion for stay of mandate pending application for writ of certiorari to the Supreme Court.

Upon consideration whereof, it is ordered that the mandate is stayed to and including February 18, 1978, pending the timely filing by appellant of a petition for writ of certiorari in the Supreme Court of the United States. If, on or before that date, the Clerk of this Court shall receive notice from the Clerk of the Supreme Court of the United States that a timely petition for writ of certiorari has been filed in that Court, the stay of mandate shall continue until final disposition by the Supreme Court.

(signed) HOWARD K. PHILLIPS,
Clerk.

DEMANDS FOR PRODUCTION OF STATEMENTS AND REPORTS OF WITNESSES

Title 18 USC, Section 3500

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) to an agent of the Government shall be the subject of supena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court

shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a defendant pursuant to this section, the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial.

(d) If the United States elects not to comply with an order of the court under paragraph (b) or (c) hereof to deliver to the defendant any such statement, or such portion thereof as the court may direct,the court shall strike from the record the testimony of the witness, and the trial shall proceed unless the court in its discretion shall determine that the interests of justice require that a mistrial be declared.

(e) The term "statement," as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means--

(1) a written statement made by said witness and signed or otherwise adopted or approved by him; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness to an agent of the Government and recorded contemporaneously with the making of such oral statement.

Added Pub.L. 85-269, Sept. 2, 1957, 71 Stat. 595.

PERSONS REQUIRED TO MAKE RETURNS OF INCOME

Title 26 USC, Sect. 6012

Persons required to make returns of income:

(a) General rule.--Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $750 or more, except that a return shall not be required of an individual (other than an individual referred to in section 142(b)--

(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a), and for the taxable year has a gross income of less than $2,450.

(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than $2,850, or

(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $3,600 but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by $750 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by $750 for each additional personal exemption to which the individual or his spouse is entitled under section 151)c);

(C) Every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;

(2) Every corporation subject to taxation under subtitle A;

(3) Every estate the gross income of which for the taxable year is $600 or more;

(4) Every trust having for the taxable year any taxable income, or having gross income of $600 or over, regardless of the amount of taxable income;

(5) Every estate or trust of which any beneficiary is a nonresident alien;

(6) Every political organization (within the meaning of section 527(e)(1)), and every fund treated under section 527(g) as if it constituted a political organization, which

has political organization taxable income (within the meaning of section 527(c)(1) for the taxable year; and

(7) Every homeowners association (within the meaning of section 528(c)(1) which has homeowners association taxable income (within the meaning of section 528(d)) for the taxable year.

except that subject to such condition, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

FILING REQUIREMENTS

PUBLIC LAW 92-178, INTERNAL REVENUE ACTS 1971:

SEC. 204

(a) In General.--Effective with respect to taxable years beginning after December 31, 1971, section 6012(a) (1) (relating to persons required to make returns of income) is amended--

(1) by striking out "$600" each place it appears and inserting in lieu thereof "$750";

(2) by striking out "$1,700" each place it appears and inserting in lieu thereof "$2,050";

(3) by striking out "$2,300" each place it appears and inserting in lieu thereof "$2,800"; and

(4) by inserting after subparagraph (B) the following new subparagraph:

"(C) Every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applies;".

RETURNS PREPARED FOR OR EXECUTED BY SECRETARY

TITLE 26 USC, SECT. 6020:

(a) Preparation of return by Secretary.--If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary.--

(1) Authority of Secretary to execute return.--If any person fails to make any return (other than a declaration of estimated tax required under section 6015) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns.--Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

TITLE 26 USC, SECT. 7203:

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. Aug. 16, 1954, c. 736, 68A Stat. 851.

INJUNCTIONS; THREE-JUDGE COURTS

TITLE 28 USC, SECT. 2282:

Injunction against enforcement of Federal statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

TITLE 28 USC, SECT. 2284:

Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice

of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application

for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. As amended June 11, 1960, Pub.L. 86-507, § 1(19), 74 Stat.201.

DISTRICT COURTS - THREE-JUDGE COURT - REQUIREMENT

PUBLIC LAW 94-381 (S. 537); Aug. 12, 1976

2284. Three-judge court; when required; composition; procedure

(a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

2403. Intervention by United States or a State; constitutional question.

Sec. 6. Item 2403 of the analysis of chapter 161, of title 28, United States Code, is amended to read as follows:

"2403. Intervention by United States or a State; constitutional question."

Sec. 7. This Act shall not apply to any action commenced on or before the date of enactment.

Approved August 12, 1976.